

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LOUIS FRANCK and LI ZHEN FENG, Individually  
and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

Case No.: 21-cv-04955

NEW YORK HEALTH CARE INC., MURRY  
ENGLARD and GLEN PERSAUD,

Defendants.

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**NOTICE OF MOTION**

Nature of Action:	Wage and hour putative collective and class action.
Moving Parties:	Defendants New York Health Care Inc. ("NYHC"), Murry Englard, and Glen Persaud.
Directed To:	Plaintiffs Louis Franck and Li Zhen Feng.
Place:	United States District Courthouse, 500 Pearl Street, New York, New York 10007, Courtroom 21D (Magistrate Judge James L. Cott)
Date and Time:	To be determined by the Court
Relief Requested:	1) Dismissal of plaintiff Franck from the action; 2) Dismissal of the Complaint in its entirety; 3) alternatively, abstention and a stay of proceedings to the extent the Complaint purports to seek relief on behalf of home-health aides who worked 24 hour "overnight" shifts for Defendant NYHC; and 4) such further and other relief that the Court may deem appropriate.
Grounds for Relief:	FRCP 12(c); prior settlement; <i>Colorado River District v. United States</i> , 424 U.S. 800, 817 (1976). Having accepted a Rule 68 offer of judgment, Plaintiff Franck may not maintain this action. Further neither Frank nor Plaintiff Feng specifically allege denial of overtime in violation of the FLSA. And Defendant Feng alleges no individual

FLSA violations whatsoever. So, if Frank is dismissed from the action, Feng may not prosecute this action as a putative collective representative. Accordingly, the Court should dismiss the Complaint in its entirety. Alternatively, the Court should abstain and stay this action under *Colorado River* to the extent it overlaps with a long-pending state court wage and hour matter, where a class consisting of home health aides employed by NYHC who worked 24-hour or overnight shifts has already been certified.

Supporting Papers: Defendants' Memorandum of Law, dated February 22, 2022; Declaration of Peter C. Godfrey, Esq., dated February 22, 2022.

Answering Papers: If any, are due in accordance with the Court's February 8, 2022 Motion Scheduling Order (Dkt. No. 80).

Oral Argument: Requested.

Dated: February 22, 2022

**HODGSON RUSS LLP**

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Murry England and Glen Persaud*

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